

Application No. 10/789,181
Docket No.: ECV-5062CIP2DIV
Response to Office action of 1-24-2008

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Remarks

The remarks below are in response to an Office Action mailed on January 24, 2008, and a Notice of Non Complaint Amendment mailed on June 23, 2008. In the Office Action, the drawings were objected to as lacking a hemostasis valve as recited in Claims 1 and 15. In addition, Claims 1-5, 9-12 and 15-20 were rejected under 35 U.S.C. 103(a) over U.S. Pats. Nos. 5,156,596 to Balbierz et al. ("Balbierz") and 5,092,846 to Nishijima et al. ("Nishijima"). Finally, Claims 1-5, 9-12, 15-16 and 19-20 were rejected under obviousness-type double patenting over U.S. Pats. Nos. 6,827,710 and 6,592,544.

With respect to the double-patenting rejection, without conceding the appropriateness of the rejection and for expedient prosecution, a terminal disclaimer is enclosed disclaiming any term over the commonly assigned U.S. Pats. Nos. 6,827,710 and 6,592,544. The double-patenting rejection has therefore been overcome.

Applicant's attorney disagrees with the objection that the drawings fail to depict a hemostasis valve. Several figures depict such a valve, such as the valve 70 in Figure 1 of the present application. Figures 19 and 20 also show such a valve. It may be that the lack of a valve in Figures 43A and 43B is being objected to. However, Applicant's attorney is not aware of a requirement that each elected species have a figure depicting all of its claimed elements. In fact, MPEP 809.02(a) even alludes to the idea that a species may not be fully embodied in one or two figures:

(B) Clearly identify each (or in aggravated cases at least exemplary ones) of the disclosed species, to which claims are to be restricted. The species are preferably identified as the species of figures 1, 2, and 3 or the species of examples I, II, and III, respectively. *In the absence of distinct figures or examples to identify the several species*, the mechanical means, the particular material, or other distinguishing characteristic of the species should be stated for each species identified. If the species cannot be conveniently identified, the claims may be grouped in accordance with the species to which they are restricted. Provide reasons why the species are independent or distinct (emphasis added).

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The objection to the drawings has therefore been overcome.

In the Office Action, it was admitted that Balbierz does not disclose an introducer including a side arm opening distally with respect to the valve. Instead, the rejection relies upon Nishijima as allegedly teaching a side arm positioned distal to a valve. One of ordinary skill in the art, however, would not be inclined to combine Nishijima with Balbierz to create an infusion introducer and catheter coupled by a multi-function adapter, wherein the infusion introducer has a side arm opening distally from a hemostasis valve. Balbierz, when differentiating the prior art, teaches against introduction of liquids downstream of a septum (which is analogous to a valve) because of undesirable stagnation.

Also, any liquids being flowed through the outer cannula lumen (i.e., through the annular space between the inner and outer cannulae) must be introduced downstream of the septum whereby the space immediately downstream of the septum (and upstream of the introduction of the liquid) is substantially stagnant. Furthermore, the fact that this space is not flushed out means that if the fluid being flowed through the outer cannula lumen is changed, there will be a transition time during which a mixture of the old and new fluids will be present. As some medicaments are not compatible with others such mixing can be undesirable.

See, col. 2, ll. 1-12 of Balbierz. Thus, the present invention as recited in Claims 1 and 15 represents a surprising result over the teachings of the prior art. The remaining Claims 4-5, 9-12 and 16-20 depend from, and further patentably distinguish, Claims 1 and 15. The rejection under 35 U.S.C. 103(a) has therefore been overcome.

With respect to the Notice, a page break has been inserted following the Amended Claims, and the Remarks section now begins on a new page.

Conclusion

In view of the remarks and amendments presented above, it is respectfully submitted that the pending claims of the present invention are in condition for allowance. It is respectfully

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requested that a Notice of Allowance be issued in due course. The examiner is requested to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

If an appropriate payment does not accompany or precede this submission, the Commissioner is hereby authorized to charge fees for filing of the Terminal Disclaimer [if not already charged with the original submission]. Pursuant to 37 C.F.R. 1.136(a), Applicants hereby requests an extension of time for **One Month** to respond to the above-referenced Office Action. The Commissioner is hereby authorized to charge the required fee of \$110.00 [if not already charged with the original submission], or to credit any overpayment, to Deposit Account No. 501225 (ECC-5062CIP2DIV).

Respectfully submitted,

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